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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION
OF THE SOLAR ALLIANCE FOR A
DECLARATORY ORDER THAT
PROVIDERS OF CERTAIN SOLAR
SERVICE AGREEMENTS WOULD NOT BE
PUBLIC SERVICE CORPORATIONS

Docket No. E20633A-08-0513

ISSUES BRIEF OF FREEPORT-
MCMORAN COPPER & GOLD INC.
AND ARIZONANS FOR ELECTRIC
CHOICE AND COMPETITION

INTRODUCTION

Freeport McMoRan Copper & Gold Inc. and Arizonans for Electric Choice and Competition (collectively "AECC") hereby submit this Issues Brief in support of AECC's recommendation to hold an evidentiary hearing in the above captioned matter. An evidentiary hearing is the proper forum to address the issues raised by the Solar Alliance's application ("Application"). These issues are ripe for determination when considered in the context of electric restructuring, and the Arizona Corporation Commission's ("Commission") implementation of policies to promote the development of renewable forms of distributed generation in retail markets. With the passage of the Renewable Energy Standard rules ("RES") and its various performance requirements for affected electric utilities, there has been added pressure on competitive retail markets to develop and offer a range of products that can help Arizona achieve its renewable policy goals. It is important that the Commission determine where distributed generation solar providers fit within the

1 larger framework of electricity regulation so that market participants, affected utilities and all
2 classes of customers can fully understand the opportunities available to them. Because
3 regulatory uncertainty creates a disincentive for new investment, holding a series of
4 workshops would be a poor alternative to an evidentiary hearing, which hearing would allow
5 the Commission to provide guidance based on a record.¹ Finally, AECC agrees that the
6 Solar Alliance has standing to request the relief sought by its Application. *See* Solar
7 Alliance Motion for Procedural Conference at 3-5.

8 **ISSUES TO BE ADDRESSED AT HEARING**

9 AECC recommends that the following issues be addressed during the hearing:

- 10 1. Would a solar provider be considered a public service corporation under the
11 specific facts set forth in the Application?
- 12 2. What are the key factors that any entity must consider in determining whether
13 the service and/or products it provides to retail customers require regulation by the
14 Commission? (*e.g.* lease of services and/or products versus sale of electricity).
- 15 3. What are the key factors to consider when deciding whether a distributed
16 generation unit can be considered self-generation by the host customer? (*e.g.*
17 ownership of renewable energy credits?).
- 18 4. Can the Commission adopt a set of guidelines that clearly define what services
19 and/or products make the providing entity a public service corporation, and what
20 services and/or products do not?
- 21 5. If the Commission determines that some or all distributed generation solar
22 providers are public service corporations, is an alternative form of regulation (*i.e.*
23 streamlined process) in the public interest? Does this alternative form of regulation
24 already exist? (*e.g.* electric service providers).
- 25 6. What is the relationship between the RES rules and the distributed energy
26 component thereof, with the services and products being provided by Solar Alliance
members?

¹ Some parties question whether the Commission can establish policy based on a generic application. AECC asserts that the Commission has adopted and established general policies through generic proceedings in the past, but that separate proceedings (*i.e.* adjudication not a public service corporation) are necessary on an individual basis to implement such policies.

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CONCLUSION

Although the Solar Alliance contends that addressing these issues (or any of the issues raised by other parties) is not necessary to decide the Application, AECC asserts that the generic nature of the Solar Alliance's request merits an evidentiary hearing. In the interest of judicial economy, the Commission should broaden the scope of a hearing to include issues other than the Solar Alliance's twelve characteristics, and whether an entity that retains all twelve is a public service corporation under Arizona law. Otherwise, the regulatory uncertainty that currently exists may not be resolved in a timely manner. AECC does not wish to underscore the importance of the underlying legal questions, but recognizes that any interpretation of law by the Commission may be subject to legal challenge. This is another reason why an evidentiary record will be important to support any final decision in this matter. Therefore, to the extent that the Commission identifies any issue raised by other parties that will assist the Commission in resolving the instant Application, AECC supports their inclusion in matters to be addressed during an evidentiary hearing.

RESPECTFULLY SUBMITTED this 15th day of June 2009.

FENNEMORE CRAIG, P.C.

By 

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3 Docket Control
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